IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

MFA.No. 565 of 2000()

OPMV.660/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA
.....

APPELLANT/PETITIONER:

K.L.PADMAKUMARI., W/o. MADHAVAN NAIR,
THEKKEPUTHEN VEETTIL, CHANDANAKKAVU WARD,
ALAPPUZHA. 11. (DIED L.R.S IMPLEADED)

(* ADDL. APPELLANTS)

2. M.R.MADHAVAN NAIR,
S/o. LATE RAMAKRISHNA PILLAI,
THEKKE PUTHEN VEETTIL, CHANDANAKKAVU WARD ,
ALAPPUZHA.

3. BALAGOPAL, S/O. M.R.MADHAVAN NAIR,
-DO- -DO-

4. BALAKRISHNAN, S/o. M.R. MADHAVAN NAIR,
-DO- -DO-

(*ADDL. APPELLANTS 2 TO 4 ARE IMPLEADED AS LEGAL HEIRS OF THE DECEASED APPELLANT AS PER ORDER DATED 3.10.2007 ON I.A.No.1907/07)

BY ADV. SRI.A.K.ALEX
SRI.P.VIJAYARAGHAVAN

RESPONDENTS/RESPONDNETS:
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1. A.K.SIVARAMAN, S/o.KRISHNAN,
VIII/88, PAZHUKKATHARA VEEDU,
WARD NO.24, TRIPUNITHURA MUNICIPALITY,
THRIPUNITHURA.

2. THE MANAGING PARTNER, M/S. BEST TRANSPORT CO.XLI/1615,
NEAR KACHERIPPADY, BANERJI ROAD,
KOCHI.18.

3. THE MANAGER, ORIENTAL INSURANCE CO. LTD.,
ALAPPUZHA.

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15/10/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.1907/2007 IN M.F.A.No.565/2000

DISMISSED

15.10.2007 **Sd/-J.B.KOSHY,JUDGE**

Sd/- K.HEMA,JUDGE

TRUE COPY

P.A TO JUDGE

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 565 of 2000

Dated this the 15th day of October, 2007.

JUDGMENT

Koshy, J:

A 44 year old woman met with a motor accident on 5.11.1993 and suffered injuries. She claimed compensation of Rs.1,96,000/-. The Tribunal found that the accident occurred due to the negligence of the vehicle driven by the first respondent, owned by the 2nd respondent and insured by the 3rd respondent Insurance Company. But, only an amount of Rs.45,000/- was awarded as compensation. The quantum of compensation awarded is disputed. Two doctors were examined. Ext.A38 disability certificate would show that she had deviated nasal septures with partial nasal block on (Rt) side and she was having 7% disability. Ext.A39 is the disability certificate issued by Dr.P.Syam, Ortho Surgeon, MCH, Kottayam. It shows that due to the after-effects of the injuries caused to the shoulder she has got 10%. Totally, 17% disability was there. Ext.A34 medical certificate issued by PW4 shows that in view of the injuries to pancreas she need continuous treatment. Ext.A34 was

issued on 4.11.1997. It is mentioned therein that she has calcific Pancreatitis and Diabets Melletus. It is also mentioned that she had a flare up of Pancreatitis following road traffic accident on 5.11.1993 and she requires continuous treatment. She died pending appeal on 19.2.2007. It is the contention of the appellant that she died as a result of after-effect of the accident as she was continuously under treatment, but the treatment records were not produced. Whether these treatments are due to the accident or not or due to some other causes are yet to be proved. Whether the accidental injuries increased or accelerated the disease if any she was formerly having is to be considered only after seeing the treatment records from the hospital and as well as expert medical opinion. In the above circumstances, we remand the matter to the Tribunal for further evidence. Both parties are allowed to adduce evidence to show that further enhancement of compensation is entitled to or not. We are not disturbing the other finding.

The appeal is allowed by way of remand and parties may appear before the Tribunal on 17.12.2007.

Sd/-

J.B.KOSHY,
JUDGE.

Sd/-

Krs.

K. HEMA,
JUDGE.

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 565 of 2000

15th day of October, 2007.

JUDGMENT